THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.21293 of 1997

Date:9th February, 2007

Between:

Dogga Venku Naidu, S/o.Somulu,
Marepalli (V), Deverapalli (M),
Visakhapatnam District.

..... Petitioner

AND

1.The Chairman & Presiding Officer,
Industrial Tribunal cum Labour Court,
Visakhapatnam and three others.

.....Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.21293 of 1997

ORDER:

Aggrieved by the award of the Industrial Tribunal-cum- Labour Court, Visakhapatnam, in I.D.No.59 of 1994 dated 12.05.1997, whereby the Tribunal dismissed the petition, the present writ petition is filed.

2. The petitioner-workman, in his application, stated that he was appointed by the first respondent from 15.01.1987 on daily wages and later as a casual labour with effect from 13.06.1989. He was removed from service from 15.03.1991 without reason, without issuing notice of termination, without payment of retrenchment

compensation and contrary to the provisions contained in Section 25-F of the Industrial Disputes Act, 1947, (for short, 'the Act'). Petitioner would contend that the order of removal was illegal and that he is entitled for reinstatement.

3. In the rejoinder filed on behalf of first respondent, it is stated that the petitioner worked on daily wages from 06.01.1988, his services were terminated with effect from 23.04.1988, that the petitioner worked from 06.01.1988 to 12.04.1991 with a number of breaks without continuation of service and that the petitioner had not put in even three months continuous service during the period he worked.

4. Before the Tribunal, the workman examined himself as WW.1 and marked the Xerox copy of his appointment order dated 12.06.1989, as Ex.W.1 and the legal notice dated 17.07.1993, as Ex.W.2. The Tribunal noted that only a Xerox copy of the appointment order-Ex.W.1 was produced, wherein the name of the petitioner was written separately and not in continuation and since the petitioner had failed to produce the original of these proceedings, which was marked to the individual concerned and had not given any reason for merely producing a Xerox copy instead of the original, Ex.W.1 appeared not to be genuine and not reliable. The Tribunal held that, except for the self-interested testimony of the workman, there was no reliable evidence to show that he worked with the respondents continuously from 1987 to 1991. While taking note of the fact that the respondents had failed to produce the concerned records, the Tribunal held that adverse inference could only be drawn if the evidence produced by the petitioner-workman was genuine and

reliable. The Tribunal held that since the petitioner had produced a non-genuine order under Ex.W.1, his oral evidence to show that he worked continuously for more than one year could not be believed. The Tribunal came to the conclusion that the petitioner had failed to prove that he worked with the first respondent for more than one year continuously and, therefore, was not entitled to the benefits of Section 25-F of the Act. The Tribunal held that the workman was not entitled to any relief. The Tribunal expressed its anguish over the carelessness of the officials of the respondents to the proceedings before the Tribunal and their failure to respond properly. It also observed that it appeared that the officials of the respondents deliberately withheld the concerned records from the Tribunal and this attitude of public officials was reprehensible. The copy of the award was marked to the concerned officials for taking necessary action against the erring officials.

5. *Sri S.V.R.Subrahmanyam*, learned counsel for the petitioner, would submit that the petitioner, a daily wage worker/casual labour, was illiterate and could not be expected to produce documentary evidence to establish that he had put in the minimum required 240 days service during the period of 12 months prior to his termination. Learned counsel would submit that, since the respondents did not dispute the fact that the petitioner had worked in the cadre which he claimed to have, the Tribunal ought not to have rejected the Xerox copy of the appointment order-Ex.W.1 produced by him more so since it had expressed its concern that the relevant records were deliberately not produced by the officials of the respondents. Learned counsel would also refer to the fact that in a similar I.D. (I.D.No.59 of 1994) the Tribunal, by its order dated 12.05.1997, had

directed reinstatement of the workman without continuity of service and without back wages and that similar orders should be passed in the present case also.

6) In exercise of its Certiorari jurisdiction under Article 226 of the Constitution of India, the validity of the award impugned before it need alone examined by this Court. The fact that in another award, relief of reinstatement was granted, would not arise for consideration, since the validity or otherwise of the said award does not necessitate examination in the absence of a specific challenge thereto. In the present case, the respondents in their rejoinder had stated that the petitioner had worked intermittently and that he had never worked for a continuous period beyond three months. As has been held by the Supreme Court in a catena of judgments in ***Manager, Reserve Bank of India, Bangalore v. S.Mani***[1]***; Batala coop. Sugar Mills Ltd. v. Sowaran Singh***[2]***; Surendranagar District Panchayat v. Dahyabhai Amarsingh***[3]***; Chief Engineer (construction) v. Keshava Rao (dead) by LRs.***[4]***;*** and ***Range Forest Officer v. S.T.Hadimini***[5], that the burden, to prove that he had put in a minimum of 240 days service during the period of 12 months prior to the date of his termination, is on the workman and in the absence of the petitioner having discharged this burden, it cannot be said that the mandatory requirement under Section 25-F of the Act is violated. In the present case, the Tribunal was of the view that the Xerox copy of the appointment order-Ex.W.1 produced by the petitioner-workman is not genuine and that no explanation was given for his inability to produce the original thereof. The Tribunal held that the petitioner had

not discharged the burden of establishing the fact that he worked for more than 240 days during the period of 12 months prior to the date of his termination and, accordingly, passed a nil award. The Certiorari jurisdiction of this Court is supervisory and not appellate and this Court would not sit in appeal over the findings recorded by the Tribunal, nor would it re-appreciate the evidence on record or substitute its findings for that of the Tribunal, as long as the conclusions reached by the Tribunal are based on the evidence on record. It is only in cases where the findings arrived at by the Tribunal are found to be perverse or, was based on no evidence or, in cases where there is an error apparent on the face of award, would there be any justification for interference. The findings of the Tribunal, in the present case, are based on the evidence on record. Its conclusions that the burden was on the petitioner-workman to establish that he had not put in the minimum required 240 days of service during the period of 12 months prior to his termination, is in accordance with the law laid down by the Supreme Court in the aforesaid judgments. I see no reason to interfere with the award of the Tribunal.

7. The writ petition fails and is, accordingly, dismissed. No costs.

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RAMESH RANGANATHAN, J.

Date:09th February, 2007.

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[1] (2005) 5 SCC 100

[2] (2005) 8 SCC 481

[3] (2005) 8 SCC 750

[4] (2005) 11 SCC 229

[5] (2002) 3 SCC 25